



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	06/30/03	Bill No:	SB 1062
Tax:	Property	Author:	Committee on Revenue and Taxation
Board Position:	Board Sponsored	Related Bills:	

BILL SUMMARY

This Board of Equalization sponsored omnibus property tax bill would:

- Require assessors to notify property owners of an open space contract cancellation value and the right to appeal that value within sixty days, clarify the commencement of the appeals period, and correct cross reference errors. *Government Code §51203 and §51283.*
- Separate the base year value transfer provisions and new construction exclusions for environmentally contaminated property that is remediated. *§69.4 and §74.7*
- Allow a base year value transfer to be granted on a prospective basis after the three-year time period for filing a claim has expired. *§69.5*
- Make technical modifications to language related statute of limitations on supplemental and escape assessments. *§75.11 and §532*
- Eliminate the requirement that a special notation be made on the assessment roll being prepared for a pending supplemental assessment. *§75.30*
- Allow supplemental and escape assessment notices to be Board-approved rather than Board-prescribed. *§75.31, §534*
- Replace the title "Executive Secretary" with "Executive Director." *§155, §1841, §1609.5*
- Increase the minimum amount of damage required to qualify for property tax deferral from \$5,000 to \$10,000, consistent with the \$10,000 level for disaster relief under Section 170. *§194*
- Streamline the joint administration of the welfare exemption by eliminating the duplication of effort. *§§ 213.7, 214, 214.01, 214.8, 231, 254.5, 254.6, 259.5, 259.7, and 272*
- Correct a cross reference error to Section 61. *§218*
- Repeal an obsolete section of law related to the lien date change over from March 1 to January 1 for the 1997-98 fiscal year for certain open space and timberland preserve zone contracts. *§401.9*
- Change the date by which the Board is required to publish interest rate components used to value enforceably restricted open-space land and restricted historical property, and delete obsolete language. *§423, §439.2*
- Repeal obsolete sections of the Property Taxes Law. *§5098 and §5098.5*

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Summary of Amendments

The amendments to this bill since the previous analysis add the provisions to streamline the joint administration of the welfare exemption.

ANALYSIS

Open Space Contracts - Cancellation Values

Government Code Section 51283

Current Law

Sections 51280 through 51285 of the Government Code (known collectively as Article 5 of Chapter 7 of the Government Code) govern the cancellation of open-space contracts. These open-space contracts, which restrict the property to certain uses, allow the property owner to receive property tax relief. Government Code Section 51283 requires the county assessor to determine a "cancellation value" of the land for the purpose of determining a cancellation fee. In accordance with current law, the cancellation value is the current fair market value of the land as if unrestricted. The cancellation fee will be an amount equal to 12 1/2 percent of the current fair market value. Government Code Section 51240 allows cities and counties to include in their open-space contracts restrictions, terms, and conditions, including payments and fees, that are more restrictive than those set forth in governing statutes.

The county assessor must certify the cancellation value to the board of supervisors or council so that the cancellation fee can be determined. Government Code Section 51203 provides that the fair market valuation referenced in Section 51283 may be appealed pursuant to Revenue and Taxation Code Section 1604. However, due to subsequent renumbering of sections of the Revenue and Taxation Code, what was once Revenue and Taxation Code Sections 1604 and 1604.1 is now Revenue and Taxation Code Section 1605. Section 1605 provides that the property owner has 60 days from the "date of notice" to appeal the value. However, Government Code Section 51283 does not require that the property owner receive a "notice" of the cancellation value.

Proposed Law

This bill would amend Government Code Section 51203 to update the cross reference to Revenue and Taxation Code Section 1605; and would amend Government Code Section 51283(a) to require that assessors notify property owners of the cancellation value and their right to appeal that value within 60 days of the date of the notice or postmark date, whichever is later.

Comments

Clerks of county assessment appeals boards, county assessors, and taxpayers are unsure of when the 60-day appeals period provided for in Section 1605 begins. Since the county assessor determines the cancellation value and certifies the value to the board of supervisors or city council, it makes sense that at the time the value is certified to the board or council, the assessor also notify the property owner of the value so that if the property owner disagrees it can be appealed prior to the board or council setting the fee. The date of this notice would also serve to clarify the point in which the 60-day appeal period begins to run.

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Environmental Contamination
Revenue and Taxation Code Section 69.4 and 74.7

Current Law

Section 69.4 of the Revenue and Taxation Code implements Proposition 1 of November 1998 which was enacted to provide two possible forms of property tax relief to property owners who unknowingly purchase contaminated property - either a base year value transfer to a replacement property or a new construction exclusion if the property must be rebuilt after the land contamination is cleaned up. Section 69.4 contains both the new construction provision and the base year value transfer provision, which is essentially a change in ownership exclusion. Change in ownership exclusions (commencing with Section 60) are contained in Chapter 2 of Part 0.5 of Division 1 of the Property Taxes Law, while the new construction exclusions are contained in Chapter 3 (commencing with Section 70.)

Proposed Law

This bill would delete the new construction exclusion from Section 69.4 in Chapter 2, *Change in Ownership and Purchase*, and place the provisions in a newly established section of code, Section 74.7 in Chapter 3, *New Construction*.

Background

On November 3, 1998, the voters of California approved Proposition 1, adding subdivision (i) to Section 2 of Article XIII A of the California Constitution. Upon implementation by the Legislature, this amendment allows one of two forms of property tax relief for qualified contaminated property. Specifically, property owners are able to choose from *either* of the following:

1. They may sell or otherwise transfer the qualified contaminated property and transfer its base year value to a replacement property of equal or lesser value. The replacement property must be acquired or newly constructed within five years *after* the sale or transfer of the qualified contaminated property. If the replacement property is located in a different county than the qualified contaminated property, then the county in which the replacement property is located must have passed a resolution accepting such base year value transfers.
2. If structures located on the qualified contaminated property are substantially damaged or destroyed in the course of the remediation of the environmental problems, the repair or replacement of such structures may be excluded from the definition of "new construction" provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

This relief applies to replacement property that is acquired or newly constructed on or after January 1, 1995, and to property repairs performed on or after that date.

Chapter 941 (Stats. 1999, SB 1231) added Section 69.4 to the Revenue and Taxation Code to provide the necessary Legislative implementation of the constitutional amendment. Since many of the specific conditions and limitations of this property tax relief are detailed in the constitutional language, the existing statutory language is brief and both the new construction provision and the base year value transfer provision, which is essentially a change in ownership exclusion, were contained in one statute.

Comments

This bill would separate the base year value transfer and new construction exclusions provisions and place them in appropriate chapters in the Revenue and Taxation Code.

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Base Year Value Transfers*Revenue and Taxation Code Section 69.5***Current Law**

Revenue and Taxation Code Section 69.5 provides that persons over the age of 55 years and disabled persons may transfer, subject to many conditions and limitations, the base year value of their primary residence to a newly acquired replacement residence. Among the limitations on obtaining relief is the requirement that the property owner file a claim form with the assessor. Current law requires that the claim be filed within three years of the date the replacement dwelling was purchased or newly constructed.

Proposed Law

This bill would amend Section 69.5 of the Revenue and Taxation Code to allow the assessor to grant, on a prospective basis, a base year value transfer at any time the claim is filed after the three year period. That is, if a claim is made after the customary three year filing period, then the base year value transfer will be granted on the next lien date after the claim form is filed (i.e. property tax refunds are not issued for past years, but future property tax bills will reflect the lower assessed value).

Comments

1. **Purpose.** This provision would codify a recommendation made by the Taxpayers' Rights Advocate's Office in their 2002 Annual Report and Hearing before the Board of Equalization. Its purpose is to ensure that taxpayers are not permanently barred from receiving a constitutionally authorized benefit due to a statutory requirement.
2. **Related Legislation.** As a matter of policy, the proposed amendment is consistent with the direction the Legislature took with the parent-child exclusion in 1997 (SB 542, Ch. 941), and provides relief to a class of taxpayers, who, save for missing a filing deadline, would have qualified for the exclusion.
3. **This is a constitutionally based benefit.** Base year value transfers were enacted as a constitutional amendment by the voters of California (Propositions 60, 90 and 110). The three year period to file a claim is a statutory requirement, no such requirement exists in the Constitution.
4. **Technical Amendment.** The assessment year is the same as the calendar year (January through December). The lien date of the assessment year is the January 1 at the beginning of the year. So, for claims filed in 2004, relief will apply as of January 1, 2004, for the 2004-05 fiscal year. If a claim is filed between July 1 and December 31, a roll correction will have to be made and taxes cancelled or refunds made for 2004-05. For true prospective relief, Section 69.5(n)(1) should be amended to read:

"property tax relief applies prospectively only, commencing with the lien date of following the assessment year in which the claim is filed."

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Supplemental and Escape Assessments*Revenue and Taxation Code Section 75.11 and 532***Current Law**

Section 75.11(d)(3) provides that any supplemental assessment resulting from an unrecorded change in ownership or change in control for which either a change in ownership statement required by Section 480 or a preliminary change in ownership report required by Section 480.3 is not timely filed may be made within eight years after July 1 of the assessment year in which the event occurred. Similarly, Section 532(b)(2) provides that any escape assessment resulting from an unrecorded change in ownership or change in control for which either a change in ownership statement required by Section 480 or a preliminary change in ownership report required by Section 480.3 is not filed may be made within eight years after July 1 of the assessment year in which the property escaped taxation or was underassessed. However, neither Section 480 nor Section 480.3 cover a change in control. Change in control involves legal entities to which Section 480.1 applies. The unlimited statute of limitations period under Section 532(b)(3) applies to legal entities who have not filed a change in ownership statement as required by Sections 480.1 or 480.2.

This bill would amend Section 75.11 of the Revenue and Taxation Code to delete the erroneous reference to "change in control."

This bill would also amend Section 532(b)(2) to add the word "timely" in order to clarify and make consistent the statute of limitations in situations when a change in ownership statement was not properly filed. For example, an individual should not be able in the 6th year after a change in ownership event to file a change in ownership statement six years after the fact to technically exclude them from (b)(2)'s "not filed" language and thereby default to the 4-year statute of limitations rather than the eight year statute of limitations. The addition of "timely" is consistent with the last sentence of 532(b)(2) which states that, for the "unrecorded change in ownership", the deed or other document evidencing the change in ownership must be filed with the county recorder's office "at the time the event took place." This addition would also be consistent with Section 75.11(d)(3).

Pending Supplemental Assessment Roll Notation*Revenue and Taxation Code Section 75.30***Current Law**

Section 75.30 of the Revenue and Taxation Code requires the assessor to place a notation on "the roll being prepared" (i.e., the roll for the next fiscal year) to indicate a pending supplemental assessment and to also notify the auditor, who places a notation of pending supplemental assessment on the current roll or on an attached separate document.

Proposed Law

This bill would repeal Section 75.30 of the Revenue and Taxation Code to eliminate the requirement that a notation that a supplemental assessment is pending be made on the roll being prepared.

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Background

The assessment roll generally lists the assessed value of all property located in the county for a particular fiscal year, and includes information such as the location of the property (either by assessors parcel number or legal description) the property owner's name and mailing address and any exemptions the property is receiving.

Revenue and Taxation Code Section 1602 requires that the assessment roll, or a copy thereof, be made available for inspection by all interested parties during regular office hours. Sections 109.5 and 109.6 provide that the data included in the assessment roll may be electronically maintained so that no physical document need be prepared. But the data must be stored in a manner that can be made readily available to the public in an understandable form.

Comments

Purpose. Many assessor's offices maintain electronic rolls, so it is not practical to implement Section 75.30 which is a requirement intended for a physical paper format. Thus, the repeal of Section 75.30 reflects the existing practice in many county assessors' offices.

The public can determine any pending supplemental assessments from other data sources maintained by the assessor and available at the assessor's office. Additionally, with respect to the property owner specifically impacted by a pending supplemental assessment, Section 75.31 requires the assessor to personally notify the assessee of the new base year value and the amount of the supplemental assessment(s). With respect to transmitting the data to the county auditor, Section 75.40 outlines the supplemental assessment information that the assessor is to transmit to the auditor.

Board Prescribed Forms

Revenue and Taxation Code §75.31, §534

Current Law

The administration of the property tax requires the use of a variety of forms, notices and claims for exemptions or exclusions. Some sections of law outline the types of information that must be included in the document or provides the precise wording that must be included. Some sections of law specifically provide that the relevant form, claim, or notice for that particular section of law will be "prescribed" by the Board of Equalization. With respect to any property tax exemption enacted by statute or constitutional amendment, Revenue and Taxation Code Section 251 provides that the Board is to prescribe all procedures and forms related to the exemption. A form, notice, or claim that is "prescribed" requires that each of the 58 counties use an exact replica of the document created by the Board.

Proposed Law

This bill would amend Sections 75.31 and 534 of the Revenue and Taxation Code to provide that supplemental assessment notices and escape assessment notices are to be Board-approved rather than Board-prescribed.

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Background

When a new base year value has been established for a change in ownership or completion of new construction, Revenue and Taxation Code Section 75.31 requires the assessor to send a notice of the new base year value to the assessee called a "notice of supplemental assessment." Similarly, whenever an escape assessment is made, Section 534 requires that the assessee be notified of the assessment before it becomes effective. The escape assessment notice requirements of Section 534 pre-date Proposition 13. The supplemental assessment notice requirements of Section 75.31 were added in 1983. Chapter 647, Statutes of 2000 (SB 2170), amended these two sections to require that certain additional information concerning the assessee's right to an informal review and right to appeal be included in the notice given by the assessor. It additionally amended these sections of law to require that the heretofore pre-existing notices be prescribed by the Board.

Comments

1. **Purpose.** Because these two forms are Board-prescribed (BOE-66 and BOE-67), it has caused an undue hardship on various counties and some have been unable to comply with the law. The design of some counties' notices fit the county's computer system already established. To make the counties change their systems, in order to produce a notice that is the replica of the Board notice, would entail an added expense. Additionally, in some cases, the computer system is tied in with the County Auditor's and County Tax Collector's Offices. So, to change the Assessor's requirements would necessitate also changing the computer systems in the other two county offices. Thus, this bill would change the notice requirements in Sections 75.31 and 534 from Board-prescribed to Board-approved.
2. **Oversight would be retained over the content of the forms.** Property Tax Rule 252 provides that certain forms created by the county must be "approved" by the Board. These include the two notices in question here: notice of supplemental assessment and notice of escape assessment. Therefore, these two notices would still be reviewed and approved by the Board to ensure they contain the necessary information required by Section 75.31 and 534.

Disaster Relief

Revenue and Taxation Code Section 194

Current Law

Property taxes may be reduced following a disaster, misfortune, or calamity in those counties where the board of supervisors has adopted an ordinance authorizing the disaster relief provisions of Revenue and Taxation Code Section 170. Disaster relief is provided by allowing the county assessor, under specified conditions, to reassess the property after the lien date to recognize the loss in a property's market value. One of these conditions is that the sum of the full cash values of the land, improvements and personalty before the damage or destruction exceeds the sum of the values after the damage by \$10,000 or more.

In addition, any property owner whose real property has been substantially damaged or destroyed in a Governor proclaimed state of emergency, and who has applied for property tax relief under Section 170, may apply to defer payment of property taxes on the next installment of the regular secured roll pursuant to Section 194 et seq. To qualify for deferral, for property receiving a homeowners' exemption, subdivision (f) of

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Section 194 defines “substantial disaster damage” as damage amounting to at least 10 percent of its fair market value or \$5,000, whichever is less. For all other property, the damage must be at least 20% of value

Proposed Law

This bill would amend Section 194 of the Revenue and Taxation Code to update the minimum amount of damage to qualify for property tax deferral from \$5,000 to \$10,000 consistent with the \$10,000 level for disaster relief under Section 170.

Comments

Purpose. This threshold amount was increased from \$5,000 to \$10,000 by SB 1181 (Chapter 407, Stats. 2001), effective January 1, 2002, and damages must be at least 20% of value. The damage threshold of \$5,000 is now outdated since the threshold to qualify for relief under Section 170 has been increased to \$10,000. Therefore, the \$5,000 threshold amount in Section 194(f) should be increased to \$10,000 to conform with the change made to Section 170 effective January 1, 2002.

Welfare Exemption Administration

Revenue and Taxation Code Sections 213.7, 214, 214.01, 214.8, 231, 254.5, 254.6, 259.5, 259.7, and 272

Current Law

Administration. In general, the Welfare Exemption from local property taxes is available for a qualifying organization putting property to a qualifying use. Both conditions must be met for the exemption to be granted, i.e., the organization that owns (or in some cases leases) the property must meet certain requirements and the use of the property must meet certain requirements. Under existing law, the exemption is jointly administered by the Board and the county assessor, with each agency reviewing the same documents filed by claimants in order to determine if an exemption should be granted. Organizations must reapply for the welfare exemption every year.

Organizations filing in a county for the first time must file additional information with their claims so it can be determined if the entity is a qualifying organization. The first filing consists of the claim form, tax exemption letter(s), articles of incorporation with amendments, financial statements, and applicable supplemental affidavits depending on the use of the property. Additionally, claimants must file annual claims for each property location every year so that it can be determined if the use of the property is qualifying.¹ All documents are filed in duplicate. The assessor reviews the documents and makes an initial determination of eligibility, then forwards a copy of the documents to the Board. Statute requires the Board to make a finding as to the eligibility on every claim for each applicant and the applicant's property and forward its finding to the assessor concerned. Currently, the Board is responsible for reviewing all claims filed in the state, which now approaches 30,000 annually.

Appeals. In the joint review process, if the Board staff finds an organization or a

¹ Annual claims include the claim form, with applicable attachments and supplemental affidavits.

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property to be ineligible, the claimant may request a hearing before the elected members of the Board. However, if the Board finds that the organization or a property is eligible, the exemption may nevertheless be denied at the local level by the assessor. (The assessor may not, however, grant an exemption that the Board has denied.) If the assessor denies an exemption that was granted by the Board, the organization's remedy is to pursue legal action, since local assessment appeals boards do not have the authority to hear welfare exemption claims.

Proposed Law

Administration. This bill would eliminate duplicative review functions, so the Board would determine whether an *organization* is eligible for the welfare exemption and the county assessor would determine whether the *use of the property* is eligible for the welfare exemption.

Organization. The Board would determine whether the organization itself is eligible to receive the welfare exemption. The organization would file the first filing documents (articles of incorporation, tax letters, financial statements) one time with the Board rather than in duplicate in each county that the claimant has property. If the Board determined that an organization qualified, the Board would issue an *organizational clearance certificate* that the claimant would file with the assessor in any of the 58 counties. §254.5

Property Use. The county assessor would determine whether a qualifying organization's property is eligible for the exemption based on the property's use. Claimants would continue to file annual claims with the county assessor in order for the assessor to determine whether the property owned or operated by a qualifying organization is actually used for exempt purposes on the lien date. However, Board staff would no longer be required to review claims and forward findings to assessors. Thus, rather than claimants filing in duplicate, the claimant would only file one copy for the assessor to review. The assessor's determination of whether an organization's property use satisfies the requirements of Section 214 would be made by the county assessor without review by the Board staff. But the assessor could not grant a claim unless the organization holds a valid organizational clearance certificate issued by the Board. §254.6

Appeals. This bill would modify the appeals procedures before the Board to conform to the proposed division of duties. If Board staff finds that an organization is ineligible for an organizational clearance certificate (or revokes its clearance certificate) the organization could appeal to the Members of the Board of Equalization.²

This bill would outline in statute the existing procedures for an organization to follow if the assessor denies the welfare exemption for nonqualifying property use. If denied, the claimant could file a claim for refund of property taxes with the county board of supervisors and then file a refund action in superior court. This is the procedure under existing law, and is therefore not a change in law.

Audits. This bill would also clarify that the Board and assessor may audit organizations to verify continuing qualification for the exemption. § 254.5(c)(2), §254.6(f)

²² If the Board denies the organization, the organization may file a refund action in superior court after filing a claim for refund of property taxes with the local County Board of Supervisors to exhaust their administrative remedies, which existing procedures generally require, prior to filing suit.

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County Surveys. This bill would require the Board to review the assessors' administration of the welfare exemption as part of the assessment standards surveys conducted by Board staff to ensure proper administration of these exemptions. §254.5(g)

Background

The current system of joint administration is duplicative in that:

- Claimants must file all claims, including attached documents, in duplicate with the county assessor for each property and each separate location.
- Claimants must file the same organizational documents, tax letters, and financial statements in each county that the organization has property.
- Different assessors review the same first filing documents (i.e., articles, tax letters, financial statements) when the organization has property located in multiple counties.
- Both the county assessor and the Board review the same documents for first filings and annual claims.

Comments

1. **Purpose.** The current system of joint administration and review has been criticized in recent years as being unnecessarily burdensome on claimants, duplicative, and costly. The purpose of this measure is to address these criticisms by (1) eliminating duplication of effort in administering the welfare exemption, (2) reducing the paper filing requirements on welfare exemption claimants and (3) eliminating the annual paperwork shuffle between the Board and counties.
2. **Separation of Duties.** This bill would update the joint administration of the welfare exemption. The Board will determine whether an *organization* is qualified for the welfare exemption and the county assessor will determine whether the *use of the property* is eligible for the welfare exemption. The assessor's determination of whether an organization's property use satisfies the requirements of Section 214 will be made exclusively by the county assessor without review by the Board staff. This system establishes a division of duties, with no duplication of effort, that permits the Board and assessors to focus on the tasks which they are best suited to fulfill. The Board has the technical expertise on evaluating whether the organization meets the established criteria and the assessor is in the best position to inspect the property and determine its use.
3. **This bill retains joint administration of the welfare exemption and safeguards.** The joint administration was established by the Legislature as a safeguard against favoritism in granting exemptions at the local level. This bill would retain state oversight since no organization could receive the welfare exemption on any property in California if it did not receive an organizational clearance certificate from the Board. In addition, this bill would require the Board to review the assessors' administration of the welfare exemption as part of the assessment standards surveys conducted by Board staff to ensure proper administration of these exemptions.
4. **Paperwork Reduction For Non-Profits.** This bill would reduce the amount of paperwork that an organization is required to provide. The establishment of a centralized location to obtain an organizational clearance certificate that may be

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used in each of the 58 counties will greatly reduce the paperwork demands placed on non-profits. The claimant would file the organizational documents one time with the Board and file the claims for use of property with the assessor. The organization will no longer be required to file duplicate organizational documents each time they start operation in a new county, and would no longer be required to file annual claims, including supplemental affidavits, in duplicate. In addition, the streamlining of the process would reduce the amount of time until the claimant is notified of eligibility. Currently the assessor must wait for the Board to concur with the assessor's recommendation to grant the exemption.

Open Space and Timberland Preserve Zone Contracts

Revenue and Taxation Code Section 401.9

Current Law

Existing law provides that certain open space lands and timberland preserve zone property can receive preferential assessment resulting in a reduced assessed value. One condition of receiving this tax relief is that the property be subject to an "enforceable restriction" as to the use of the land. For the first fiscal year that the special assessment procedure is sought, Revenue and Taxation Code Section 430.5 requires that the necessary enforceable restriction be recorded "on or before the lien date" of the particular fiscal year. Section 430.5 also specifies that property owners must commence the enforceable restriction process no later than a certain date to ensure that there is sufficient time to finalize and record the restriction prior to the relevant lien date.

Proposed Law

This bill would repeal, as obsolete, Section 401.9 of the Revenue and Taxation Code related to the lien date change over from March 1 to January 1 for the 1997-98 fiscal year for certain open space and timberland preserve zone contracts.

Background

In 1996, Section 430.5 provided that property owners could commence the enforceable restriction process up to the December 15 prior to the lien date. However, in 1995, legislation had been enacted to change the lien date from March 1 to January 1, commencing with the 1997-98 fiscal year. Thus, the lien date for the 1997-98 fiscal year would be January 1, 1997 rather than March 1, 1997. And for new open space and timberland preserve zone contracts the law permitted property owners to start the enforceable restriction process as late as December 15, 1996, but the restriction must have been recorded by January 1, 1997 -- a period of only two weeks.

In anticipation of this timing problem, Section 401.9 was added to the Revenue and Taxation Code (SB 1827, Ch. 1087, Stats. 1996, Committee on Revenue and Taxation) to ensure that property owners entering into new contracts where the enforceable restriction was recorded in the period of time between the new and old lien dates (January 1, 1997 through February 28, 1997), would be able to receive the special assessment procedures for the 1997-98 fiscal year. This section of code was relevant only to the 1997-98 fiscal year and is now obsolete. In 1997, Section 430.5 was amended (SB 542, Ch. 941 Stats. 1997) to change the deadline for commencing the enforceable restriction process from December 15 to October 15 thereby providing a permanent solution to the timing problem created with the change in the lien date.

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Comments

Purpose. This bill would repeal as obsolete Section 401.9 related to the lien date change over from March 1 to January 1 for the 1997-98 fiscal year for certain open space and timberland preserve zone contracts since it is now obsolete.

Open-Space Land and Restricted Historical Property - Interest Rate Components

Revenue and Taxation Code Section 423 and 439.2

Current Law

Revenue and Taxation Code Section 423 requires assessors to value property that is enforceably restricted under open-space contract or agricultural conservation easement by a specified capitalization of income method. Subdivision (b)(1) of Section 423 requires the Board to announce, by September 1, an interest rate component that is the arithmetic mean of the most recent 5 years of yield rates for long-term United States government bonds as most recently published by the Federal Reserve Board as of each September 1. The Federal Reserve Board publishes the yield rates on a weekly basis each Monday morning for the previous week.

Similarly, Revenue and Taxation Code Section 439.2 requires assessors to value enforceably restricted historical property by a specified capitalization of income method. Subdivisions (b)(1) and (c)(1) require the Board to announce no later than September 1 of the year preceding, the assessment an interest rate component that is equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board. The Federal Housing Finance Board publishes this rate once a month, usually on the last Tuesday of the month.

Proposed Law

This bill would amend Revenue and Taxation Codes 423 and 439.2 to specify that the interest rate component be based upon the most recent yield rate published by the respective Federal agencies "on September 1" rather than the "most recently published." It would also give the Board until October 1 to calculate, prepare, and mail the announcement.

This bill would also delete obsolete date specific language in Section 423.

Background

The Federal Reserve Board publishes the yield rates on a weekly basis. Consequently, to use the "most recently published figures" usually gives the Board less than a week to prepare and mail the announcements. The announcement is done via a letter to Assessors which must first go through an internal review process before it can be released.

Comments

1. **Purpose.** The delay of the formal publication of the interest rate component would give the Board a reasonable amount of time to prepare and mail the announcements. Assessors do not need the information to complete their assessments until January 1. Additionally, since much of the value calculations are now computerized, the urgency to release this information as early as possible no longer exists.
2. **No impact on assessments.** The time period for calculating the interest rate components remain the same, so the resulting assessment values will not be impacted.

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3. **Obsolete Language.** Subparagraphs (A) through (E) of Section 423(b)(1) provide for the five-year phase implementation (1993-94 through 1997-98) for the open space lands interest component. Since the implementation phase has been completed, these subparagraphs are now unnecessary.

Unsecured Roll - Tax Rate

Revenue and Taxation Code Sections 5098 and 5098.5

Current Law

Revenue and Taxation Code Sections 5098 and 5098.5 would have provided automatic property tax refunds plus interest in the event that a court ruled that the tax rate to apply to property on the unsecured portion of the assessment roll in the first year of Proposition 13 was 1% rather than the prior year's tax rate of 2.67%.

Proposed Law

This bill would repeal Sections 5098 and 5098.5 of the Revenue and Taxation Code.

Background

Section 12 of Article XIII of the California Constitution provides that the tax rate to be applied to the assessed value of property on the unsecured roll is the rate used for property on the secured roll in the prior fiscal year. Proposition 13 added Article XIII A to the California Constitution of which Section 1(a) established a new maximum ad valorem tax rate of 1%, but the language specified that the provisions applied to *real* property. Section 1(a) of Article XIII A was silent as to the tax rate to be applied to *personal* property, which is often collected on the unsecured roll, and Proposition 13 had not modified Section 12 of Article XIII.

In implementing Proposition 13 in its first year, the issue arose as to the proper tax rate for property on the unsecured portion of the assessment roll for the 1978-79 fiscal year. Should it be the prior year's secured tax rate as Article XIII, Section 12 specified, which would be the tax rate for the 1977-78 fiscal year, a pre-Proposition 13 rate of about 2.67% or did the new Proposition 13 tax rate of 1% found in Article XIII A, Section 1 apply? In practical application, for the 1978-79 fiscal year, 22 counties used the secured tax rate for the 1977-78 fiscal year and 36 counties used the new Proposition 13 tax rate of 1%.

The issue of the proper tax rate to apply was litigated in *Board of Supervisors of San Diego County v. Gerald J. Lonergan as Auditor and Controller*, and the California Supreme Court ultimately decided the issue on August 14, 1980 (27 Cal.3d 855). The Court found that Section 1(a) of Article XIII A was not applicable to property taxed on the unsecured portion of the assessment roll for the 1978-79 fiscal year. Taxes on unsecured property, both real and personal, were to be assessed at the prior year's rate for the secured roll as provided by Article XIII, Section 12 of the Constitution.

During the time this matter was still unsettled, legislation was enacted adding Revenue and Taxation Code Sections 5098 and 5098.5 to provide automatic refunds in the event the court ruled that the proper tax rate was the reduced Proposition 13 tax rate of 1%. Taxpayers in counties who paid taxes based on the higher tax rate would not need to file a claim for refund and interest on the extra taxes paid would be included in the refund amount (AB 1973, Ch. 60, Stats. 1980, in effect April 11, 1980). However, in accordance with the decision, refunds were not necessary.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Comments

Purpose. These sections of law were rendered obsolete by the California Supreme Court decision in *Board of Supervisors of San Diego County v. Gerald J. Loneragan* on August 14, 1980 (27 Cal.3d 855) and may be repealed.

Miscellaneous Technical-Housekeeping Provisions

1. **Cross Reference Error.** This bill would amend Section 218 of the Revenue and Taxation Code to correct a cross reference error to Section 61. Chapter 388 of the Statutes of 1996 relettered subdivisions (e), (f), (g), (h), and (i) of Section 61 to (f), (g), (h), (i), and (j) respectively. Section 218 contains a cross reference to relettered subdivision (h) of Section 61. Therefore, Revenue and Taxation Code Section 218 should be amended to change the code cross-reference from Section 61(h) to Section 61(i).
2. **Executive Director.** This bill would replace "Executive Secretary" with "Executive Director" to reflect the current title. §155, §1841, §1609.5

COST ESTIMATE

The Board would incur some minor absorbable costs in informing and advising local county assessors, the public, and staff of the law changes.

REVENUE ESTIMATE

It is estimated that the amendment to Section 69.5 would result in a revenue loss of less than \$100,000 per year. The remaining provisions of this bill have no revenue impact.

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